

***HOUSE RESOURCES & CONSERVATION COMMITTEE
ADMINISTRATIVE RULES REVIEW***

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2007 Legislative Session

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RESOURCES & CONSERVATION COMMITTEE

IDAPA 20 - DEPARTMENT OF LANDS

20.03.14 - RULES GOVERNING GRAZING LEASES AND CROPLAND LEASES

DOCKET NO. 20-0314-0601 (FEE RULE)

NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE

EFFECTIVE DATE: The effective date of the revised temporary rule is September 13, 2006. This pending rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending and temporary rule. The action is authorized pursuant to Section(s) 58-104(6) and 58-105, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for any change.

Currently, the department of Lands makes valuations of lessee-owned rangeland improvements on State grazing leases. However, there is no process for filing objections and resolving conflicts over the valuations made by the department. Both the temporary and proposed rules will establish a process and timetable that provides structure and certainty in how objections are resolved.

Changes to the temporary and proposed rules are based on public comments received by the department. These changes will allow applicants more time to submit an objection to the department's valuations, and for the department to respond to the applicants with the results of the independent third party review.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the August 2, 2006 Idaho Administrative Bulletin, Vol. 06-8, pages 66 through 68.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reason(s):

It confers a benefit by protecting the endowment trust from the costs, delayed lease payments, and reduced revenues associated with resolving objections to department valuations of lessee owned rangeland improvements on State grazing leases. Those costs are a threat to the constitutional mandate to maximize financial returns to the endowments.

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FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger. This fee or charge is being imposed pursuant to Section 58-127, Idaho Code. The following is a specific description of the fee or charge imposed or increased:

Objectors must submit a fee of \$2,500 or 10% of the State's total valuation, whichever is greater.

Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule or temporary rule, contact George Bacon or Tracy Behrens at (208) 334-0200.

DATED this 12th day of September, 2006.

THIS NOTICE WAS PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is **June 15, 2006**.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 58-104(6) and 58-105, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be held as follows:

10:00 to 11:00 a.m. Wednesday 10:00 to 11:00 a.m. Thursday
August 9, 2006 August 10, 2006
Idaho Department of Lands office Idaho Department of Lands office
954 West Jefferson Street, Boise, Idaho 3563 Ririe Highway, Idaho Falls, Idaho

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

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Currently, the Department of Lands makes valuations of lessee-owned rangeland improvements on State grazing leases. However, there is no process for filing objections and resolving conflicts over the valuations made by the Department before a lease parcel goes to auction. Both the temporary and proposed rules will establish a process and timetable that provides structure and certainty in how objections are resolved.

The new rules will require that parties objecting to the Department's valuation must submit a complete and timely notice of objection form and a fee which will be used to pay for the services of an independent third party (certified appraiser). The independent third party will review the Department's valuation and the alternate valuations provided by the applicants, and determine which is most accurate. The determination by the independent third party will be deemed final.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

It confers a benefit by protecting the Endowment Trust from the costs, delayed lease payments, and reduced revenues associated with resolving objections to Department valuations of lessee owned rangeland improvements on State grazing leases. Those costs are a threat to the Constitutional mandate to maximize financial returns to the Endowments.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

Objectors must submit a fee of \$2,500 or 10% of the State's total valuation, whichever is greater, to pay for the services of an independent third party to evaluate conflicting value estimates.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because these rules were developed through informal negotiations with user groups before rule changes were contemplated.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact: Tracy Behrens, Program Manager, Grazing & Cropland, (208) 334-0200 or George Bacon, Assistant Director, Lands Minerals & Range, (208) 334-0200.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 23, 2006.

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DATED this 27th day of June, 2006.

George B. Bacon
Assistant Director, Lands, Minerals & Range
Idaho Department of Lands
954 West Jefferson Street
PO Box 83720
Boise, Idaho, 83720-0050
Phone: (208) 334-0200
Fax: (208) 334-3698

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

102. ~~APPRAISAL OF IMPROVEMENTS~~ VALUATION OF IMPROVEMENTS.

Credited improvements will be valued on the basis of replacement cost, including lessee provided labor, equipment and materials, less depreciation based on loss of utility. Improvements cannot be appraised higher than current market value, regardless of lessee's cost. Any improvement amortization or cost limitations identified by the Department will be considered in determining a final value. ~~(3-13-02)~~(6-15-06)T

01. Applicant Review of Department Improvement Credit Valuation. All applicants for a conflicted lease will be provided a copy of the Department's improvement credit valuation for review and a notice of objection form. Any applicant objecting to the appraisal will have ~~fourteen~~ *twenty-one (1421)* days from the date of the valuation mailing to submit the notice of objection form to the Department. If no objections are received during the ~~fourteen~~ *twenty-one (1421)* day review period, the lease auction will be scheduled and will proceed using the Departments improvement credit valuation. ~~(6-15-06)T~~(9-13-06)T

02. Failure to File a Timely Notice of Objection. Failure to submit a notice of objection within the specified ~~fourteen~~ *twenty-one (1421)* day period will preclude any applicant from further administrative remedies and the auction will proceed using the Department's improvement credit valuation. ~~(6-15-06)T~~(9-13-06)T

03. Notice of Objection. Any applicant objecting to the Department improvement credit valuation must submit a complete and timely notice of objection form, and payment of two thousand five hundred dollars (2,500) or ten percent (10%) of the total Department improvement credit valuation whichever is greater, to pay for the services of an independent third party. Within five (5) days of receipt of the notice of objection, the Department will notify all applicants in writing that an objection has been received and provide them with a list of certified appraisers. (6-15-06)T

04. Selection of an Independent Third Party. The applicants will have ~~fourteen~~ *twenty-one (1421)* days from the date of the Department's notification of an objection to select by mutual agreement, one individual from the list of certified appraisers to serve as an independent third party. If the applicants cannot agree on an independent third party within the ~~fourteen~~ *twenty-one (1421)* days, the Department will select an independent third party from the list of certified appraisers.

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twenty-one (~~14~~21) day time period, the Department will randomly select one individual from the list to serve as the independent third party. ~~(6-15-06)T~~(9-13-06)T

05. Duties of the Independent Third Party. The independent third party will review the Department improvement credit valuation and alternate valuations provided by the applicants. Following this review, the independent third party will select from among the Department valuation and alternate valuations, the one value that (s)he determines is the most accurate value of the improvements. The independent third party will notify the Department of this value in writing. (6-15-06)T

06. Notification of Final Improvement Value. Within ~~three~~ five (35) days of receiving the independent third party's final determination of improvement credit value, the Department will mail to each applicant an auction notice which shall reference the independent third party's determined value of improvements. The determination by the independent third party of the improvement value will be deemed final, and the appraised value of improvements will not be allowed as a basis for appeal of the auction. ~~(6-15-06)T~~(9-13-06)T